BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: **EMMANUEL V.,** **Claimant,** **vs.** **NORTH LOS ANGELES COUNTY REGIONAL CENTER,** **Service Agency.**	**OAH No. 2011080630**

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on September 20, 2011, in Van Nuys, California. Emmanuel V. (claimant) was represented by Sandra H., his aunt and authorized representative.[1] North Los Angeles County Regional Center (NLACRC or Service Agency) was represented by its Contract Officer, Rhonda Campbell.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on September 20, 2011.

ISSUE

Does Claimant have a developmental disability which makes him eligible for regional center services?

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[1] Claimant's and his representative's initials are used, in lieu of their last names, to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 21-year-old male (born July 14, 1990). He seeks to be eligible for regional center services under a diagnosis of autism.

2. Claimant has lived with his aunt and uncle since age 18. He does not interact with his parents anymore. Claimant's aunt was not involved in claimant's life when he was a child. She reports that claimant's parents were often homeless and that they were constantly moving. Claimant's mother is now very ill and receiving hospice services. (Testimony of Sandra H.; Service Agency Exhibit 5.)

3. Claimant was home-schooled by his parents until the 11th grade, when he began attending mainstream high school classes in a public school. He was able to graduate with his aunt's and uncle's assistance. He currently attends one computer class at North Valley Occupational Center. Although he previously tried to take a computer class at Pierce College, it was too difficult for him. (Testimony of Sandra H.; Service Agency Exhibit 5.)

4. Claimant receives services from the Department of Mental Health. He has been diagnosed with Schizophrenia, Paranoid type and has been prescribed Risperdal. (Service Agency Exhibits 4 and 6.)

5(a). In July 2010, claimant underwent a five-day vocational evaluation by Disability and Assessment Services.

5(b). According to the Vocational Evaluation Report, claimant needed additional time to complete the vocational tasks. He also worked best with the door partially closed because outside sounds and movements increased the number of times he looked behind his back or covered his eyes with his hands while testing.

5(c). Claimant's aptitudes for general learning, dexterity and motor coordination were below average; his verbal aptitude, numerical aptitude, spatial perception, and form perception were in the low average range; and his clerical perception was average.

5(d). The report also noted the following work habits:

> During testing, [claimant] required close supervision and verbal reminders to return to work after turning around in his seat to see what others were doing. He had difficulty staying on task, needing to put his head on the desk several times per hour. He also held his hands over his ears or over his eyes frequently throughout the day.

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5(e). The assessor made the following vocational recommendations:

> At this time, due to the severe work behavior issues demonstrated during testing, it is recommended that [claimant] participate in a mental health evaluation to determine whether he is indeed displaying symptoms of paranoid schizophrenia or another serious mental health related issue. (Service Agency Exhibit 3.)

6. On September 9, 2010, Shirin Sharifha, Ph.D, a clinical psychologist with the Los Angeles County Department of Mental Health (DMH), wrote a letter noting that claimant was receiving medication from his DMH psychiatrist, Aelred Boyle, M.D. The letter also stated:

> [Claimant's] diagnosis is Schizophrenia, Paranoid type. His symptoms include but are not limited to auditory and visual hallucination, poor concentration, and grandiose delusions. He is presently on Risperdal. (Service Agency Exhibit 4.)

7(a). In March 2011, when claimant appeared at NLACRC for a social assessment, the assessor observed the following:

> [Claimant] came to the meeting with his aunt. When greeted in the reception area, [he] jumped out of [his] seat, and walked very briskly into the office. His gait was strange, with his upper body bent forward from the hip. He sat at the table and was somewhat fidgety with his fingers. He appeared to be very shy, nervous and uncomfortable. When asked questions, if his answer was going to be a positive, he would answer quickly, "Oh yeah yeah." He said this many times during the meeting. No other oddities of speech were observed. He made appropriate eye contact during the meeting.

7(b). The assessor was not able to obtain much information regarding claimant's birth and early development. She noted:

> [Claimant's] aunt reports that she was not involved in [claimant's] life as he was growing up. She reports that she does not know that [claimant's] mother had a full term pregnancy. [His] aunt reports that [he] had a rough childhood. She reports that [his] parents did not have much money and were constantly moving.

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7(c). The assessor also documented claimant's levels of functioning as follows:

Self-Care:

[Claimant] reports that he is able to take care of his self-care skills independently. He reports that he does not need to be reminded. [Claimant] is responsible to do certain chores around the house. He keeps his room clean. He does his own laundry. His aunt reports that [he] has a good attitude and is willing to help around the house. Recently, she and her husband went on vacation. [Claimant] stayed at the house and took care of the two cats. He was able to stay there with no supervision. He is able to cook simple things on the regular stove. . . . He reports that he knows how to use the microwave oven to heat foods. He knows how to make a sandwich. He reports that he knows how to take public transportation independently. He is able to make purchases independently. He knows how to use a telephone.

Cognitive:

[Claimant] knows his age and birth date. He reports that he took algebra in high school and he was able to pass. He reports that he took biology in high school and passed that as well. He reports that he is able to write in complete sentences. He knows how to tell time on an analog clock.

Social/Behavioral:

[Claimant's] aunt reports that when she asks him if he would like to go to a restaurant, he reports that he would rather take out food and bring it home. [Claimant] reports that he is claustrophobic and that's why he doesn't like to go to restaurants. His aunt reports that [claimant] does not get together with friends. . . . [Claimant] reports that he is very shy. [He] reports that he is occasionally affectionate with his family. He has no history of aggression.

[Claimant] is under the care of a psychiatrist due to his diagnosis of Paranoid Schizophrenia. [Claimant's] aunt reports that [he] started taking Risperdal about 8 months ago. She reports that [claimant] seems to be less paranoid since he started taking Risperdal.

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Communication:

> [Claimant] is verbal. He is able to relate experiences. [Claimant] and his aunt report that [he] never received speech and language therapy. His aunt reports that [claimant] has trouble following complex directions. (Service Agency Exhibit 5.)

8(a). On March 31, 2011, Ann L. Walker, Ph.D., licensed psychologist, conducted a psychological evaluation of claimant. The assessment included a review of records, an interview with claimant and his aunt, observations of claimant, and administration of diagnostic tools for measuring cognitive functioning, adaptive skills, and academic achievement and for ascertaining characteristics of autism. (Service Agency Exhibit 7.)

8(b). Dr. Walker observed that claimant separated easily from his aunt to go to a separate testing room. In the testing room, he showed brief eye contact and seemed very shy and nervous. However, as the evaluation progressed, he became more comfortable, and his eye contact improved substantially. Toward the end of the evaluation, claimant was sustaining very good eye contact and was able to speak comfortably with Dr. Walker. (Service Agency Exhibit 7.)

8(c). To assess claimant's cognitive functioning, Dr. Walker administered the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV). Dr. Walker noted:

> [Claimant's] visual perceptual reasoning and speed in time visual motor coordination tasks were in the normal range. Verbal comprehension skills and immediate verbal memory was in the borderline range. [Claimant] showed areas of dramatic strength and dramatic weakness. He showed greatest strength in abstract visual reasoning and in his speed in time visual motor coordination tasks.
> He showed greatest weakness in abstract verbal reasoning and in a task involving immediate verbal memory.
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> Due to a high inter-test scatter, the Full Scale IQ is not a valid measure of overall functioning. (Service Agency Exhibit 7.)

8(d). To assess claimant's academic skills, Dr. Walker administered the Wide Range Achievement Test – Fourth Edition (WRAT-4). Claimant's word reading skills were at an 8.9 grade level, and his math computation skills were at an 8.7 grade level, which were in the normal range. (Service Agency Exhibit 7.)

8(e). In the area of adaptive functioning, Dr. Walker administered the Vineland Adaptive Behavior Scales, Second Edition (Vineland-II); claimant and his aunt provided the responses necessary for the completion of this test. Claimant's Vineland-II scores placed him in the borderline range in the Communication (standard score 71) domain, and in the "mild"

range (indicating significant delays) in both the Daily Living Skills (standard score 69) and Socialization Skills (standard score 69) domains. (Service Agency Exhibit 7.)

8(f) Dr. Walker noted that claimant scored in the non-autistic range on the Autism Diagnostic Observation Schedule (ADOS), Module 3. The Gilliam Autism Rating Scale – Second Edition (GARS-2) was completed by claimant's aunt. Dr. Walker noted, "This [test] yielded an Autism Index in the possible probability of autism range." The Autism Diagnostic Interview- Revised could not be completed because claimant's aunt did not have much information about claimant's early development. Dr. Walker found that claimant did not meet any of the criteria for a DSM-IV-TR diagnosis of Autistic Disorder.[2] (Service Agency Exhibit 7.)

8(g). Dr. Walker's diagnostic impressions were: Schizophrenia, Paranoid Type, and no diagnosis on Axis II. (Service Agency Exhibit 7.)

9. On April 6, 2011, NLACRC sent a letter to claimant's aunt, informing her that they had determined claimant was not eligible for regional center services. On August 8, 2011, claimant's aunt requested a fair hearing. (Exhibit 1.)

10. On August 31, 2011, claimant's DMH psychiatrist, Dr. Boyle, sent NLACRC a letter stating:

> I treated [claimant] at the DMH West Valley Mental Health Center from 8-9-10 until 4-19-11. . . . I diagnosed [claimant] with . . . schizophrenia . . . and [Post Traumatic Stress Disorder]. I diagnosed him with schizophrenia based on his report of hearing voices in the absence of significant mood symptoms.
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> However, at times he said these voices were his own voice, and he has other signs and symptoms that may be better accounted for by a developmental disorder. For example, his affect and demeanor are odd, and when under stress he wrings and shakes his hands, and won't raise his head. Autism or a pervasive developmental disorder may better account for his presentation, but I am not well versed in this area of diagnosis. I believe he would benefit from being evaluated for one of these disorders by a psychiatrist with expertise in this area, and his diagnosis may need to be revised. (Claimant Exhibit A.)

[2] "DSM-IV-TR" refers to the Diagnostic and Statistical Manual of Mental Disorders, 4th ed., Text Revised, which is published by the American Psychiatric Association. The Administrative Law Judge takes official notice of the DSM-IV-TR as a highly respected and generally accepted tool for diagnosing mental and developmental disorders.

11. Brook Hansen, M.D., from the San Fernando Valley Community Mental Health Center, Inc., also sent a letter on claimant's behalf which stated:

> This letter is in regards to [claimant], whom I have been following since July 19, 2011 for psychiatric care. This letter is intended to verify his diagnosis of Autism spectrum. From my evaluations of [claimant], he either meets criteria for high functioning autism or for Aspergers disorder. It is difficult to distinguish which diagnosis best fits him as his developmental history is unknown. (Claimant Exhibit B.)

12(a). On September 12, 2011, Katherene Barshay, M.Ed., a licensed educational psychologist sent a letter on claimant's behalf. She noted that claimant had received a "limited assessment" on August 5, 2007, when he was starting to attend public school in 11th grade. She saw him again on September 9, 2011, and noted the following:

> His eye contact had improved but was still fleeting. He was able to answer questions with some ease since he had previously worked with this examiner but evidenced some stammering and word retrieval problems. He displayed considerable repetitive hand wringing and at times rocked in his seat. Affect was odd and there was no facial responsiveness.

12(b). Ms. Barshay conducted some limited testing, but did not use any instruments to assess for characteristics of autism. Nevertheless, she came to the following conclusions:

> [Claimant] meets the diagnostic criteria for Autistic Disorder. There is a qualitative impairment in social interactions. He exhibits a marked impairment in the use of multiple nonverbal behaviors; failure to develop peer relationships; and lacks social or emotional reciprocity. . . . There is impairment in communication with a verified delay in language processing. [Claimant] exhibits restricted repetitive patterns of behavior as reflected in his excessive focus on one area of interest (sports cards).
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> Based on the above information [claimant's] profile of behavior and functioning is congruent with a diagnosis of autism. (Claimant Exhibit C.)

12(c). The evidence did not establish that Ms. Barshay was a clinical psychologist or that she had the expertise or credentials to render a DSM diagnosis of Autistic Disorder. Consequently, her written opinions were given little weight compared to those of Dr. Walker.

13. At the fair hearing, Heike Ballmaier, Psy.D., testified credibly on behalf of the Service Agency. According to Dr. Ballmaier's review of the records, claimant does not meet

the criteria for a diagnosis of Autistic Disorder. In making this assertion, she noted that knowledge of the onset of symptoms is critical and that any noted impairment must be "qualitative impairment" in order to make a diagnosis of Autistic Disorder.
She further pointed out that, in order to be eligible for regional center services under the category of autism, a claimant must meet the formal diagnosis as specified for Autistic Disorder, and that other pervasive developmental disorders, including Pervasive Developmental Disorder, Not Otherwise Specified, and Aspergers, are not qualifying conditions under the Lanterman Act. Dr. Ballmaier further opined that claimant was never diagnosed with mental retardation, and that there is no documentation to suggest that he has a condition similar to mental retardation or requiring treatment similar to persons with mental retardation. (Testimony of Heike Ballmaier, Psy.D.)

14. Claimant's aunt testified credibly on claimant's behalf. She confirmed claimant's behaviors which were reported during his evaluations. She emphasized that he is "very odd and has no friends." She is seeking regional center eligibility for him to obtain help for him with housing, job training and accessing resources that cannot be obtained through other agencies. (Testimony of Sandra H.)

15. The evidence presented at the fair hearing failed to establish that claimant suffers from Autistic Disorder.

16. The evidence presented at the fair hearing did not establish that claimant suffers from a condition similar to mental retardation or requiring treatment similar to persons with mental retardation.

LEGAL CONCLUSIONS

1. Claimant did not establish that he suffers from a developmental disability entitling him to Regional Center services. (Factual Findings 1 through 16.)

2. Throughout the applicable statutes and regulations (Welf. & Inst. Code §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the Service Agency's decision. Where a claimant seeks to establish his eligibility for services, the burden is on the appealing claimant to demonstrate that the Service Agency's decision is incorrect. Claimant has not met his burden of proof in this case.

3. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability. As applicable to this case, Welfare and Institutions Code section 4512 defines "developmental disability" as:

> [A] disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual, and includes mental retardation, cerebral palsy, epilepsy, autism, and

> disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

4. To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that he has a "substantial disability." In assessing what constitutes a "substantial disability" within the meaning of section 4512, the following provisions are helpful:

> California Code of Regulations, title 17, section 54001 states, in pertinent part:
>
> (a) "Substantial disability" means:
> (1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and
> (2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:
> (A) Receptive and expressive language;
> (B) Learning;
> (C) Self-care;
> (D) Mobility;
> (E) Self-direction;
> (F) Capacity for independent living;
> (G) Economic self-sufficiency.

In California Code of Regulations, title 17, section 54002, the term "cognitive" is defined as:

> [T]he ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly, and to profit from experience.

5(a). In addition to proving a "substantial disability," a claimant must show that his disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: mental retardation, epilepsy, autism and cerebral palsy. The fifth and last category of eligibility is listed as "Disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation." (Welf. & Inst. Code, § 4512.) This category is not further defined by statute or regulation.

5(b). Whereas the first four categories of eligibility are very specific, the disabling conditions under this residual fifth category are intentionally broad to encompass unspecified conditions and disorders. However, this broad language is not intended to be a catchall, requiring unlimited access for all persons with some form of learning or behavioral disability. There are many persons with sub-average functioning and impaired adaptive behavior; under the Lanterman Act, the Service Agency does not have a duty to serve all of them.

5(c). While the Legislature did not define the fifth category, it did require that the qualifying condition be "closely related" (Welf. & Inst. Code, § 4512) or "similar" (Cal. Code. Regs., tit. 17, § 54000) to mental retardation or "require treatment similar to that required for mentally retarded individuals." (Welf. & Inst. Code, § 4512.) The definitive characteristics of mental retardation include a significant degree of cognitive and adaptive deficits. Thus, to be "closely related" or "similar" to mental retardation, there must be a manifestation of cognitive and/or adaptive deficits which render that individual's disability like that of a person with mental retardation. However, this does not require strict replication of all of the cognitive and adaptive criteria typically utilized when establishing eligibility due to mental retardation (e.g., reliance on I.Q. scores). If this were so, the fifth category would be redundant. Eligibility under this category requires an analysis of the quality of a claimant's cognitive and adaptive functioning and a determination of whether the effect on his/her performance renders him/her like a person with mental retardation. Furthermore, determining whether a claimant's condition "requires treatment similar to that required for mentally retarded individuals" is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people could benefit from the types of services offered by regional centers (e.g., counseling, vocational training or living skills training). The criterion is not whether someone would benefit. Rather, it is whether someone's condition *requires* such treatment.

6. In order to establish eligibility, a claimant's substantial disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of "developmental disability" (Welf. & Inst. Code, § 4512 and Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are *solely* physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are *solely* psychiatric disorders or *solely* learning disabilities. Therefore, a person with a "dual diagnosis," that is, a developmental disability coupled with either a psychiatric disorder, a physical disorder, or a learning disability, could still be eligible for services. However, someone whose conditions originate from just the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination), and who does *not* have a developmental disability would not be eligible.

7. Although claimant maintains that he is eligible for regional center services, he currently does not have any of the qualifying diagnoses. Specifically, he has not established that he suffers from autism as defined by the DSM-IV-TR.

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8. The DSM-IV-TR discusses autism in the section entitled "Pervasive Developmental Disorders." (DSM-IV-TR, pp. 69 - 84.) The five "Pervasive Developmental Disorders" identified in the DSM-IV-TR are Autistic Disorder, Rett's Disorder, Childhood Disintegrative Disorder, Asperger's Disorder, and PDD-NOS. The DSM-IV- TR, section 299.00 states:

> The essential features of Autistic Disorder are the presence of markedly abnormal or impaired development in social interaction and communication and markedly restricted repertoire of activity and interests. Manifestations of the disorder vary greatly depending on the developmental level and chronological age of the individual. Autistic Disorder is sometimes referred to as *early infantile autism, childhood autism,* or *Kanner's autism*. (Emphasis in original.)
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> (*Id*. at p. 70.)

9. The DSM-IV-TR lists criteria which must be met to provide a specific diagnosis of an Autistic Disorder, as follows:

> A. A total of six (or more) items from (1), (2) and (3), with at least two from (1), and one each from (2) and (3):
>
> (1) qualitative impairment in social interaction, as manifested by at least two of the following:
>
> (a) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction
>
> (b) failure to develop peer relationships appropriate to developmental level
>
> (c) a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest)
>
> (d) lack of social or emotional reciprocity
>
> (2) qualitative impairments in communication as manifested by at least one of the following:
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> (a) delay in, or total lack of, the development of spoken language (not accompanied by an attempt

to compensate through alternative modes of communication such as gestures or mime)

(b) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others

(c) stereotyped and repetitive use of language or idiosyncratic language

(d) lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level

(3) restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:

(a) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus

(b) apparently inflexible adherence to specific, nonfunctional routines or rituals

(c) stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements)

(d) persistent preoccupation with parts of objects

B. Delays or abnormal functioning in at least one of the following areas, with onset prior to age 3 years: (1) social interaction, (2) language as used in communication, or (3) symbolic or imaginative play.

C. The disturbance causes clinically significant impairment in social, occupational, or other important areas of functioning.

(*Id*. at p. 75.)

10. In this case, claimant alleges that he should be eligible for regional center services under the qualifying disability of autism. According to the DSM-IV-TR, specific clinical criteria must be evident to diagnose Autistic Disorder. However, the evidence did not establish that claimant satisfied the required number of elements within the criteria of the

DSM-IV-TR to diagnose him with Autistic Disorder. Using these criteria, Dr. Walker, a licensed psychologist who was found to be the more credible expert (see Factual Finding 12 (c)), specifically ruled out Autistic Disorder. While Claimant does manifest some varying social and communication impairments, the evidence did not establish that he presented with symptoms meeting DSM-IV-TR criteria for the diagnosis of Autistic Disorder. The evidence did not establish that Claimant exhibits "qualitative impairment in social interaction," "qualitative impairments in communication," and "restricted repetitive and stereotyped patterns of behavior, interests and activities" as described in the DSM-IV-TR. Consequently, Claimant has not established that he is eligible for regional center services under the diagnosis of autism.

. 11. Although claimant does demonstrate some deficits in adaptive functioning (including communication, daily living skills and social skills), the evidence did not demonstrate that he presents as a person suffering from a condition similar to Mental Retardation. Moreover, the evidence did not establish that claimant requires treatment similar to that required for mentally retarded individuals. Based on the foregoing, claimant has not met his burden of proof that he falls under the fifth category of eligibility.

12. The weight of the evidence did not support a finding that claimant is eligible to receive regional center services.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant's appeal of the Service Agency's determination that he is not eligible for regional center services is denied.

DATED: October 17, 2011

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JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.